IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4909 OF 2005

Shyambahadur Rajnarayan Singh. ... Applicant.
Versus.
The State of Maharashtra. ... Respondent.

Shri Bhaskar J.Sarwade for the Applicant.

Shri K.V.Saste, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 16th August, 2005.

P.C.:

1. Heard the learned Advocate for the Applicant and the learned A.P.P. for the State.

2. The Applicant is an accused in a prosecution for offence under section 327 and 376 of the Indian Penal Code. On 6th July 2005, an application was made by the Applicant at Exh.13 praying for recalling P.W.1' and P.W.2 for cross-examination. The ground given in the application is that though the Applicant was present when the examination-in-chief of the said witness was recorded, the Advocate for the Applicant could not remain present. On 14th July 2005 one more application was made by the Applicant for recall of the said two witnesses.

3. It appears from the Roznama of 14th July 2005, the Applicant engaged the services of a new Advocate. On

14th July 2005 itself two more witnesses were examined and the said witnesses were cross-examined by the said Advocate. On the same day, the learned Judge rejected the application made by the Applicant for recalling P.W.1 and P.W.2. The learned Judge referred to two applications made by the Applicant for recall and pointed out that inconsistent stand has been taken by the Applicant.

4. The learned Advocate for the Applicant stated that after the Applicant engaged a new Advocate, he has cross-examined P.W.3 and P.W.4. He pointed out that the Application at Exh.13 was submitted by the earlier Advocate appointed by the Applicant and that is the reason why apparently there are inconsistent statements made in the Applications dated 6th July 2005 and 14th July 2005. The Application dated 14th July 2005 was made by the new Advocate engaged by the Applicant.

5. The learned A.P.P. submitted that the P.W.1 and P.W.2 are residents of U.P. and it will be difficult to procure their presence. He submitted that there is a default on the part of the Applicant and therefore, no interference is called for.

6. The Applicant is facing prosecution for offence punishable under section 376 of the IPC. P.W.1 is the prosecutrix. P.W.2 is the daughter of the prosecutrix.

In my view serious prejudice will be caused to the Applicant if he is not permitted to cross-examine the said two prosecution witnesses. However, this is a case where default is on the part of the Applicant. Therefore, the Applicant will have to pay reasonable amount by way of costs for the expenditure which may be incurred by the State. The amount of costs is fixed at Rs.1500/-.

7. Hence the following order is passed:

(i) The impugned order dated 14th July 2005 is quashed and set aside. The application made by the Applicant for recall of P.W.1 and P.W.2 is allowed subject to the Applicant depositing costs of Rs.1500/- in the trial Court within a period of two weeks from today.

(ii) If the amount of costs is deposited, the learned trial Judge will issue witness summons to P.W.1 and P.W.2 returnable on 30th September 2005. It is made clear that if the Applicant fails to cross-examine the witnesses on 30th September 2005, no further opportunity will be granted to the Applicant to cross-examine the said witnesses.

(iii) It is made clear that if the amount of costs is not deposited by the Applicant within the stipulated time, this Application will stand dismissed and the learned trial Judge will proceed further with the case. In case the amount of costs is deposited, the Respondent-State will be entitled to withdraw the same.

(iv) Parties and the concerned Court to act on an authenticated copy of the order.

Judge.